

14-1662

TAX TYPE: LOCALLY ASSESSED PROPERTY

TAX YEAR: 2013

DATE SIGNED: 2-25-2015

COMMISSIONERS: J. VALENTINE, D. DIXON, M. CRAGUN, R. PERO

GUIDING DECISION

BEFORE THE UTAH STATE TAX COMMISSION

<p>TAXPAYER,</p> <p style="padding-left: 40px;">Petitioner,</p> <p>vs.</p> <p>BOARD OF EQUALIZATION OF RURAL COUNTY, STATE OF UTAH,</p> <p style="padding-left: 40px;">Respondent.</p>	<p>INITIAL HEARING ORDER</p> <p>Appeal No. 14-1662</p> <p>Parcel No. #####-1and #####-2</p> <p>Tax Type: Locally-Assessed Property Tax Tax Year: 2013</p> <p>Judge: Nielson-Larios</p>
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This Order may contain confidential "commercial information" within the meaning of Utah Code Sec. 59-1-404, and is subject to disclosure restrictions as set out in that section and regulation pursuant to Utah Admin. Rule R861-1A-37. Subsection 6 of that rule, pursuant to Sec. 59-1-404(4)(b)(iii)(B), prohibits the parties from disclosing commercial information obtained from the opposing party to nonparties, outside of the hearing process. Pursuant to Utah Admin. Rule R861-1A-37(7), the Tax Commission may publish this decision, in its entirety, unless the property taxpayer responds in writing to the Commission, within 30 days of this notice, specifying the commercial information that the taxpayer wants protected. The taxpayer must mail the response to the address listed near the end of this decision.

Presiding:

Ms. Aimee Nielson-Larios, Administrative Law Judge

Appearances:

For Petitioner: REPRESENTATIVE-1 FOR TAXPAYER, Executive Director, Chief Professional Officer
REPRESENTATIVE-2 FOR TAXPAYER, Office Manager

For Respondent: RESPONDENT-1, County Attorney
RESPONDENT-2, County Commissioner
RESPONDENT-3, County Assessor
RESPONDENT-4, County Auditor
RESPONDENT-5, County Appraiser
RESPONDENT-6, with the County Assessor's office

STATEMENT OF THE CASE

Petitioner (“Taxpayer”) appeals the decision of the RURAL COUNTY Board of Equalization (“the County”) to deny tax-exempt status for the subject property for the 2013 tax year. This matter was argued in an Initial Hearing on November 19, 2014 in accordance with Utah Code Ann. § 59-1-502.5.

The RURAL COUNTY Board of Equalization mailed the Taxpayer a letter dated May 1, 2014, granting tax-exempt status for the subject property for the 2014 tax year, but denying exempt status for the 2013 tax year. The Taxpayer appeals the County’s denial of tax-exempt status for the subject property for the 2013 tax year. The Taxpayer asks for the tax-exempt status for the subject property from the date the Taxpayer acquired the subject property on April 29, 2013 to the end of the year, December 31, 2013.

APPLICABLE LAW

A person may appeal a decision of a county board of equalization, as provided in Utah Code § 59-2-1006.

Article XIII, § 3(1)(f) of the Utah Constitution exempts from property tax “property owned by a nonprofit entity used exclusively for religious, charitable or educational purposes” (“exclusive use exemption”).

Utah Code § 59-2-1101 (2013) (effective until January 1, 2014) provides the following for the exclusive use exemption, stating in pertinent part:

(1) As used in this section:

....

(b) "Exclusive use exemption" means a property tax exemption under Subsection (3)(a)(iv), for property owned by a nonprofit entity used exclusively for religious, charitable, or educational purposes.

....

(d) "Tax relief" means an exemption, deferral, or abatement that is authorized by this part.

(2) (a) Except as provided in Subsection (2)(b) or (c), tax relief may be allowed only if the claimant is the owner of the property as of January 1 of the year the exemption is claimed.

(b) Notwithstanding Subsection (2)(a), a claimant shall collect and pay a proportional tax based upon the length of time that the property was not owned by the claimant if:

....

(ii) pursuant to Subsection (3)(a)(iv):

(A) the claimant is a nonprofit entity; and

(B) the property is used exclusively for religious, charitable, or educational purposes. . . .

(3) (a) The following property is exempt from taxation:

....

(iv) property owned by a nonprofit entity which is used exclusively for religious, charitable, or educational purposes . . .

....

Utah Admin. Code R884-24P-40 C. applies to the exclusive use exemption, stating the following:

- C. Vacant land which is not actively used by the religious organization, is not deemed to be devoted exclusively to religious purposes, and is therefore not exempt from property taxes.
 - 1. Vacant land which is held for future development or utilization by the religious organization is not deemed to be devoted exclusively to religious purposes and therefore not tax exempt.
 - 2. Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

A party claiming an exemption has the burden of proof, and must demonstrate facts to support the application of the exemption. *See Butler v. State Tax Comm'n*, 367 P.2d 852, 854 (Utah 1962).

DISCUSSION

I. Facts

The Taxpayer is a nonprofit, 501(c)(3) organization.

The subject property includes parcels number #####-1 and #####-2, which were combined into parcel number #####-3 for tax year 2014. The subject property is located in CITY, Utah, and is improved with a 7,500 square foot building was originally built in 1921. The building was vacant on January 1, 2013, the lien date. Prior to January 1, 2013, a GROUP operated in the building. Until fall of 2012, the GROUP rented the building from NAME-1, who owned the property for about eleven years before the Taxpayer purchased it on April 29, 2013. The subject property did not receive the exclusive use exemption for 2012; the property was not owned by a nonprofit entity at that time.

In December 2012, months before the Taxpayer purchased the subject property, the Taxpayer and the County Commission discussed the County's providing funding to the Taxpayer to purchase the subject property. Also before the purchase, the Taxpayer had construction plans prepared, sight unseen, and the Taxpayer provided those plans to the Community Development Block Grant Board.

The County helped the Taxpayer purchase the building on April 29, 2013. The Taxpayer purchased the subject property through the Redevelopment Agency. The County directed its personnel to release county funds to the Taxpayer for the purchase of the building. The Taxpayer received money from the GOVERNMENT AGENCY ("GOVERNMENT AGENCY") for the purchase. The Taxpayer explained that the money from GOVERNMENT AGENCY for the purchase of the building required the Taxpayer to use the building for charitable purposes. Likewise, COMMISSIONER said the County knew the county money was going to be used to purchase the building and that the building was going to be used exclusively for charitable purposes. COMMISSIONER also said the County gave money to the

Taxpayer for building renovations, too. The Taxpayer explained the building's renovations were paid for using federal, state, and local money.

At the beginning of the initial hearing, those present discussed how county and other government representatives were related to the Taxpayer. The Taxpayer's Articles of Incorporation signed May 24, 2012 shows the following relationships: RESPONDENT-4, County Auditor, was a director, the treasurer, and an incorporator of the Taxpayer; NAME-2, County Commissioner, was a director and an incorporator of the Taxpayer; NAME-3 of the Governor's Office was a director and an incorporator of the Taxpayer; and NAME-4, CITY-2 Council, was a director and an incorporator of the Taxpayer.

Two days after the Taxpayer purchased the building, the water was turned on and the pipes burst, so the Taxpayer made immediate repairs. Also early on, the roof was repaired to stop leaks.

In May 2013, the Taxpayer had many reviews performed on the subject property. These reviews included environmental reviews and evaluations that were required for the needed renovations. Through these reviews, lead paint was found in window seals and door frames. The lead paint required abatement. Also through the reviews, an ADA bathroom failed regulations, and a new ADA bathroom was required to be added to the building. The Taxpayer had the renovation plans revised to add that bathroom. Also based on the reviews, a building entrance was required to be adjusted.

Before July 2013, the pipes and roof were repaired and construction plans were prepared. Between July and September 2013, flooring was installed and the building entrance was adjusted. There was no building permit issued in 2013. The Taxpayer explained that the lead-based paint needed to be abated before a building permit could be issued.

In May 2014, CITY-1 granted the building permits. As of the initial hearing date, the building on the subject property was scheduled to open on November 24, 2014. The County granted the Taxpayer the exclusive use exemption for the subject property for all of the 2014 tax year but denied the exemption for the 2013 tax year.

II. Taxpayer's and County's Arguments

The Taxpayer asserts that the subject property was continuously under construction from the time the Taxpayer acquired it on April 29, 2013 through December 2013. If R884-24P-40 is applicable to the Taxpayer, the Taxpayer thinks the Taxpayer has met the requirement found in R884-24P-40 C.2., which allows the exclusive use exemption for vacant land "after construction commences . . . for construction of a structure . . . used exclusively for religious [or charitable] purposes." However, the Taxpayer questions whether R884-24P-40 C., should be applied to the subject property when it specifically addresses "vacant land." The Taxpayer argues that purchasing and renovating a building differs from purchasing vacant land then constructing a building. The Taxpayer explained that when purchasing a building, the

construction plans to renovate the building must be tailored to the existing building. When purchasing a vacant lot, the construction plans for the building can be developed before the vacant lot is selected and purchased. Taxpayer asserts that the Taxpayer's construction plans and other actions occurring in 2013 show the Taxpayer's exclusive charitable use in 2013. The Taxpayer asks the Commission to grant the exclusive use exemption for this time period.

The County explained that it denied the exclusive use exemption for the subject property for the 2013 tax year because the County found the subject property did not have exclusive charitable use in 2013. The County said it considered all of the Taxpayer's activities in 2013. The County explained it applied Standard 2.17.9, which states:

2.17.9 Land Held for Future Development

Vacant land, which is not actively used by the religious, charitable, or educational organization, is not deemed to be devoted exclusively to religious purposes, and therefore not exempt from property taxes. Vacant land which is held for future development or utilization by a religious, charitable, or educational organization may not be deemed to be devoted exclusively to exempt purposes, and therefore not tax exempt, until either construction commences or a building permit is issued for construction of improvements that are intended for exclusive use. [R884-24P-40(C)]

The above standard cites R884-24P-40 C.2., which states:

Vacant land is tax exempt after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for religious purposes.

Although Standard 2.17.9 was written for vacant land, the County believes the standard is equally applicable to property with a vacant building. The County said everyone knows the County money was going to be used for the purchase and renovation of the building for the Taxpayer's charitable use, but until Standards are met, the County cannot grant the exclusive use exemption. The County attorney said there is a prior case in which a church purchased vacant land and the church had plans to build a church building on that land, but the church had no building permit. The County explained the church was denied the exclusive use exemption in that case.¹ The County asserts the same principle for vacant land applies to the purchase of the subject property. The County contends that building permits or construction is needed before exclusive use can be found. The County explained that it looked for building permits in 2013, but did not find permits until 2014. The County said the subject property had exclusive charitable use when the building permit was issued in 2014, which was the reason the County granted the exclusive use exemption for the 2014 tax year. The County questions whether the Taxpayer's construction plans are sufficient to show construction in the 2013 tax year.

¹ The case to which the County was referring appears to be *Corporation of Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d. 556 (Utah 1996).

The County also explained that the exclusive use exemption, in general, may be prorated based on when a nonprofit entity receives a building permit. The County explained that proration is addressed in the Utah State Tax Commission's Standards of Practice, Standard 2.17.3 Proportional Property Tax Payments, which states in part:

2.17.3 Proportional Property Tax Payments

When a nonprofit entity acquires property after the lien date and that property is to be used exclusively for religious, charitable, or educational purposes, it must collect and pay proportional property taxes from January 1st to the date of acquisition. (Section 59-2-1101)

....

The County explained that if the Taxpayer had received a building permit on September 30, 2013, then the County would have granted the exclusive use exemption for three months of 2013. The County explained that a building permit shows when a taxpayer is getting property ready for use.

The County asks the Commission to sustain the Board's decision denying the exclusive use exemption for the 2013 tax year.

III. Legal Analysis for the Exclusive Use Exemption and Application of Law to the Subject Property

The exclusive use exemption is provided by the Utah Constitution and has been interpreted by the Utah Supreme Court in *Utah County By and Through County Board of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357 (Utah 1986) and in *Corporation of Episcopal Church in Utah v. Utah State Tax Commission*, 919 P.2d 556 (Utah 1996). Utah Code § 52-2-1101, Utah Admin. Code R884-24P-40, and the Standards issued by the Utah State Tax Commission should all be interpreted in a way consistent with these Utah Supreme Court decisions. Under Utah law, the Utah statute allowing the exclusive use exemption, which is § 52-2-1101, must have the same extent as the constitutional provision granting the exemption. *In the Matter of Loyal Order of Moose, #259 v. County Board of Equalization of Salt Lake County*, 657 P.2d 257, 261 (Utah 1982). The Utah Supreme Court has stated, "Our statutes granting tax exemptions cannot be broader or narrower than our constitutional provision on which they are based." *Id.* Below is a discussion of *Intermountain Health Care* and *Episcopal Church*.

For a general overview, in *Intermountain Health Care*, the Utah Supreme Court granted the exclusive use exemption for property on which a hospital was being constructed. In *Episcopal Church*, the Utah Supreme Court denied the exclusive use exemption for vacant land held for the future development. In both *Intermountain Health Care* and *Episcopal Church*, the Utah Supreme Court quotes the Texas Supreme Court case of *Hedgcroft v. City of Huston*, 244 S.W.2d 632 (Tex 1951). In *Hedgcroft*, the Texas Supreme Court granted the exemption to a nonprofit entity for a building acquired

days before the lien date by the nonprofit entity, which building was being remodeled to be operated as a polio clinic by the nonprofit entity. Below, the law found in the decisions of *Episcopal Church*, *Intermountain Health Care*, and *Hedgcroft* is analyzed and applied to the subject property.

In *Episcopal Church*, the Court discussed exclusive religious use as applied to vacant land, with the Court stating the following:

We hold that the term "used exclusively" requires that the land in question be actually used or **committed to a use** that is exclusively religious in nature. *See* Utah Admin. Code R884-24-40P. Of course, the use of land can take many forms. For example, land can be used for growing crops, religious activities, or investment purposes or held as the future site for a building of worship or some other improvement.

Episcopal Church, 919 P.2d at 558-59 (emphasis added).

Thus, the subject property must be "actually used or committed to a use that is exclusively religious, [charitable or educational] in nature" for the subject property to qualify for the exclusive use exemption. Thus, if the subject property is found to have been committed to an exclusive charitable use for a time period in 2013, the subject property would qualify for an exemption for that part of the 2013 tax year.

Commitment to a use is shown by a nonprofit entity's intent and its manifestation. In *Episcopal Church*, the Court explains that a nonprofit entity's "intent and its manifestation" determine the exclusive use exemption. *Id.* at 560. The Court further explains that irrevocable commitment is a distinctive indication of intent but is not always required. *Id.* More specifically, the Court states the following:

Construction of a church on church-owned property indicates that the property is "irrevocably committed" to a religious use, not simply held for future development. *See Utah County By and Through County Bd. of Equalization v. Intermountain Health Care, Inc.*, 725 P.2d 1357, 1359 (Utah 1986). We have held that the commencement of construction qualifies the property for tax exemption. *Id.* Contrary to the Commission's conclusion, we do not require that property be irrevocably committed to a particular exempt purpose to qualify for an exemption. Rather, an irrevocable commitment is merely one indicium of the nonprofit entity's intent. [4] **It is that intent and its manifestation which determine whether property is exempt.**

Id. (emphasis added).

Applying the above law to the subject property, the Taxpayer's undisputed intent was for the Taxpayer to use the subject property exclusively for charitable use. The manifestation of the Taxpayer's intent has been shown through the following facts: the Taxpayer's discussions with the County before the purchase, the construction plans provided to the Community Board Block Grant Board before the purchase, the repairs on the property starting two days after the purchase, the reviews and evaluations starting in May 2013, the construction plans prepared in July 2013, and the building permits granted the following calendar year, and the completion of the remodeling work during the following calendar year. Additionally, the Taxpayer's intent was also shown through its contractual obligations to

GOVERNMENT AGENCY, the County, and various federal and state agencies, which obligations required the Taxpayer to purchase and remodel the building for charitable use. No evidence suggests the Taxpayer had any other intent for the property. The Taxpayer's intent and its manifestation support a finding that the subject property meets the exclusive use exemption from April 29, 2013 to December 31, 2013.

Commitment to a use can be shown by a nonprofit entity's necessary preparation of a property for exclusive charitable use. In *Intermountain Health Care*, the Court incorporates the legal reasoning of *Hedgcroft* when the Court explains why the hospital under construction in *Intermountain Health Care* would qualify for the exclusive use exemption. *Intermountain Health Care*, 725 P.2d at 1359-60. The Utah Supreme Court's reasoning in *Intermountain Health Care* is as follows:

In *Hedgcroft, supra*, residential property was donated to a nonprofit charitable organization which agreed to remodel the property and run it as a polio clinic. During the remodeling period, the city imposed a tax on the property, claiming that the organization had failed to show that the property was being actually, directly, and exclusively used for charitable purposes. The trial court and the intermediate appellate court affirmed the decision denying an exemption. The Texas Supreme Court reversed, stating:

It is obvious that without some preparation of the premises, there never could have been a polio clinic in operation. To fulfill the charitable purpose of treating polio sufferers, Hedgcroft had first to remodel the property, then to operate the clinic. **Preparation for and operation of the clinic are both indispensable. Both took place on the premises. Both constituted a use by Hedgcroft of the premises. The constitutional clause which admittedly exempts the property during operation likewise exempts the property during bona fide necessary preparation.**

Hedgcroft, 150 Tex. at 661-62, 244 S.W.2d at 636.

The same reasoning applies in this case. Since the parties have stipulated that Orem Community Hospital met the criteria when it went into operation for an exemption under §§ 59-2-30 and -31, it was also entitled to an exemption during the construction of the hospital. [3]

Intermountain Health Care, 725 P.2d at 1359-60 (emphasis added).

In the above quotation, the Utah Supreme Court incorporates the Texas court's analysis that focuses on "preparation." The Utah Supreme Court, by quoting *Hedgcroft*, states, "The constitutional clause which admittedly exempts the property during operation likewise exempts the property during bona fide necessary preparation." Applying the analysis found in *Hedgcroft*, the Taxpayer was engaging in bona fide necessary preparation of the subject property for the property to be operated for charitable use; thus, the subject property should qualify for the exemption. The Taxpayer's bona fide necessary preparation of the subject property in 2013 includes repairing the pipes two days after purchase, repairing the roof,

completing reviews and evaluations, abating the lead paint, preparing renovation plans, installing flooring, and adjusting an entrance. Because the Taxpayer was engaged in necessary preparation from April 29, 2013 to December 31, 2013, the subject property should be exempt for that time period.

In *Intermountain Health Care*, the Court provides that the constitutional policy for the exclusive use exemption is to “encourag[e] private charities.” *Intermountain Health Care*, 725 P.2d at 1359. The Court explains that if charities must pay property taxes in certain situations, the benefits from charities to the public will be diminished and, in the future, the charities might avoid providing charitable services that otherwise must be provided by the state. *Id.* Specifically, the Court states the follows:

To deny a charitable exemption for real estate on which a hospital is being constructed when its use is irrevocably committed to purposes that will qualify for a charitable exemption at its completion would not be consistent with **the constitutional policy of encouraging private charities**. The benefits conferred on the public by charities can only be diminished, to a greater or lesser extent in the long run, if monies committed to the charity must be used to pay ad valorem property taxes. . . . *Hedecroft v. City of Houston*, 150 Tex. 654, 662, 244 S.W.2d 632, 636 (1951). A contrary policy might well tend to deter charities from shouldering burdens which would otherwise have to be assumed by the state. . . .

Intermountain Health Care, 725 P.2d at 1359 (citations omitted) (emphasis added).

The constitutional policy of encouraging private charities supports allowing the exclusive use exemption for the subject property just as the policy did in *Intermountain Health Care*. The County and other government agencies provided funds to the Taxpayer to purchase and remodel the subject property for exclusive charitable use. To require the Taxpayer to pay property taxes for the time period of April 29, 2013 to December 31, 2013 diminishes the funds available for the Taxpayer to complete the remodeling and provide the charitable services.

The parties have discussed “construction” and when “construction commences,” as the terms are used in R884-24P-40 C.2., which rule applies to vacant land. In *Episcopal Church*, the Court uses these or similar terms when it discusses *Intermountain Health Care*. *Episcopal Church*, 919 P.2d at 559. In *Episcopal Church*, the Court summarizes that Intermountain Health Care’s vacant land met the “used exclusively” requirement “once construction began.” *Id.* After summarizing its holding in Intermountain Health Care, the Court states, “Active use, or commitment to active use, is a prerequisite for land to be held exempt.” *Id.* Specifically, in *Episcopal Church* the Court states:

This Court has had occasion only once to construe “used exclusively” as it applies to vacant land. In *Intermountain Health Care*, 725 P.2d 1357, we considered the taxability of property on which a hospital was being constructed. We held that while the land clearly could not have been exempt prior to commencement of construction, once construction began the property qualified for an exemption. *Id.* at 1360. Prior to construction, the land was not actively used. Active use, or commitment to active use, is a prerequisite for land to be held exempt.

Id.

Applying this quotation to the subject property, the Taxpayer has proved the subject property was “committed to active use,” as shown by the Taxpayer’s intent and its manifestation and the Taxpayer’s preparation, both of which areas have been previously discussed in this order. Thus, the subject property should be found to be exempt. The concept of “commencement of construction” should not prevent the exemption. The Court applied “commencement of construction” to vacant land that is not actively used, not to land improved with a building. It is questionable that the Court would require “commencement of construction” when land is already improved with a building and a nonprofit entity is making necessary repairs and physical changes to the building before the entity can qualify for a building permit.

Utah Administrative Code R884-24P-40 C.1. provides that “[v]acant land . . . held for future development” does not qualify for the exclusive use exemption. The concept of held for future development can be better understood by considering the *Intermountain Health Care* and *Hedgecroft*. The Utah Supreme Court explains that property “not under development for charitable purposes is not entitled to the exemption,” with the Court stating the following:

[P]roperty held by charitable organizations which is not used for charitable purposes and is not under development for charitable purposes is not entitled to exemption even if at some time in the indefinite future the charitable organization intends to use the property for a charitable use. E.g., . . . *Hedgecroft v. City of Houston*, 150 Tex. 654, 662, 244 S.W.2d 632, 636 (1951).

Intermountain Health Care, 725 P.2d at 1360, n. 3.

The Texas Supreme Court in *Hedgecroft*, cited in the above quotation, acknowledges that the exclusive use exemption does not apply property for which a nonprofit entity has “mere intentions, well-grounded plans, and hopes.” *Hedgecroft*, 244 S.W.2d at 636. However, the exemption does apply where there is more than “mere intention to use,” such as for a nonprofit entity “engaged in acts appropriate and necessary to bring the property into proper condition for operation in the performance of its charitable purposes.” *Id.* Thus, “held for future development” includes property “not under development for charitable purposes” and property for which the nonprofit entity has not “engaged in acts appropriate and necessary to bring the property into proper condition” to provide the charitable services. Applying the above law to the facts, the subject property was not “held for future development” because the subject property was “under development for charitable purposes” with the Taxpayer “engaged in acts appropriate and necessary to bring the property into proper condition” for the charitable purposes. The facts showing Taxpayer’s development of the property for charitable use are the same facts as discussed previously, showing the Taxpayer’s intent and its manifestation and the Taxpayer’s “bona fide necessary preparation.”

IV. Discussion of the Commission’s Prior Decision for Appeal No. 06-1109

The section first explains the Commission’s prior decision for Appeal No. 06-1109 and then explains why the analysis of Appeal No. 06-1109 was not applied to the case at hand.

On February 23, 2007, the Commission issued a formal hearing decision for Appeal No. 06-1109, which decision is available online at <http://tax.utah.gov/commission/decision/06-1109sanqc.pdf>. In that decision the Commission denied a nonprofit entity (“petitioner”) the exclusive use exemption for the 2006 tax year for property the petitioner acquired from another nonprofit entity on December 30, 2005. The property was improved with a building, which was vacant on December 30, 2005, the transfer date, and on January 1, 2006, the lien date. The building required renovation before it would be used by the petitioner for the petitioner’s new headquarters and for the petitioner’s charitable purposes. Before December 30, 2005, the following events occurred in connection with the property: the petitioner organized a building committee, the other nonprofit contacted the petitioner about donating the property, the petitioner’s building committee planned how the property would replace the petitioner’s three outmoded facilities, the petitioner investigated the zoning of the property, the petitioner sold its headquarters, and the petitioner was required to set aside the proceeds from the sale of that headquarters for use for the new headquarters, which was planned to be in the building on the property. On December 30, 2005 when the other nonprofit entity transferred the property to the petitioner, the other nonprofit entity conditioned its donation on the petitioner’s using the property for charitable purposes. After December 30, 2005, a building permit for interior demolition was issued in August 2006 and renovation bids were due in September 2006. It is unclear based on the written decision the extent to which the petitioner had its people on the property preparing it after the property was acquired by donation but before the building permit was issued.

In its decision, the Commission found that R844-24P-40 applied to the petitioner’s property with the vacant building even though the rule as written applies to “vacant land”; the Commission stated, “In the case before the Commission, although there was a building on the property, it is similar to these vacant land cases because Petitioner was not going to use the building prior to substantial renovation” (page 4). The Commission’s reliance on R844-24P-40 is seen throughout the decision, which states in pertinent part on pages 4-6:

The rule clarified the statute and the constitutional provisions, stating that vacant land is tax exempt “after construction commences or a building permit is issued for construction of a structure or other improvements used exclusively for a religious purpose”

....

On the lien date Petitioner was committed to using the building for charitable purposes based on the terms of the transfer from COMPANY A and also committed to using the proceeds from the sale of the prior building on the renovation, based on the terms for

which the prior building had been donated to Petitioner. Also Petitioner knew exactly what uses to which it would put the subject property. There was the expectation that the renovation would be started within a definite time frame, as Petitioner had sold its other building and needed a new place to operate. However, it was not until later in the year that Petitioner actually commenced construction pursuant to the terms of **the rule**. **From the rule** it is clear that merely being in the planning phase of construction or being committed to construct on the property is not sufficient. A building permit must be obtained or construction commenced.

The rule provides a clear and workable line for the Counties and the Commission to apply uniformly, regardless of which nonprofit is applying for the exemption. **The rule** also provides clear notice to nonprofit organizations when their property qualifies for the exemption. The Commission cannot find for Petitioner without contradicting or making an exception to **its rule**. . . .

Although the Commission recognizes that Petitioner's intended uses of the subject property were to provide important and needed charities, the Commission may not make exceptions to **the rule** and does not find a basis in law to grant the requested exemption.

(Emphasis added.)

The analysis of Appeal No. 06-1109 was not applied to the case at hand for multiple reasons.

First, R844-24P-40 C. cannot “clarif[y] . . . the constitutional provisions” of the exclusive use exemption in a way that narrows the exemption. The Utah Supreme Court explained that a constitutional provision cannot be broadened or narrowed by statute or rule. *See Loyal Order of Moose*, 657 P.2d at 261, discussed above in Section III. The breadth of the constitutional provisions for the exclusive use exemption must be determined by analyzing the Utah Supreme Court's interpretations of the exemption, including the interpretations found in *Intermountain Health Care* and *Episcopal Church*. Thus, the analysis of Appeal No. 06-1109 should have included the Utah Supreme Court's interpretations from those decisions. For the case at hand, Section III of this decision includes both the analysis of the Utah Supreme Court's interpretations of the exclusive use exemption and the application of that analysis to the subject property, before the decision finds the subject property to be exempt. R844-24P-40 C. cannot be interpreted and applied to narrow the exemption from what is allowed by the constitutional provisions as interpreted by the Utah Supreme Court.

Next, the constitutional policy for the exclusive use exemption does not include providing “a clear and workable line.” Instead, the constitutional policy is to “encourag[e] private charities.” *Intermountain Health Care*, 725 P.2d at 1359. Through the Utah Supreme Court's analyses in *Intermountain Health Care* and *Episcopal Church* and through the analysis found in *Hedgcroft*, which the Utah Supreme Court quotes, the Utah Supreme Court demonstrates how it determines the applicability of the exemption after considering multiple facts from individual situations, not after applying a “clear

and workable line.” In the case at hand, the constitutional policy of encouraging private charities supports the application of the exemption to the subject property, as discussed above in Section III.

Last, the Utah Supreme Court affirmed R884-24P-40 C. as applied to vacant land held for future development (*Episcopal Church*, 919 P.2d at 559), but the Court has not similarly affirmed the rule as applied to land already developed with a building. It is unknown whether the Utah Supreme Court would agree that R884-24P-40 C. should be applied to the petitioner’s property simply because the “[p]etitioner was not going to use the building prior to substantial renovation.” For the case at hand, Section III of this decision does interpret R884-24P-40 C. in light of the Utah Supreme Court’s decisions. In Section III, property “held for future development” is found to be property “not under development for charitable purposes” and property for which the nonprofit entity has not “engaged in acts appropriate and necessary to bring the property into proper condition” to provide the charitable services. In Section III, when the above interpretation of “held for future development” is applied to the subject property, the subject property is not found to be “held for future development” and R884-24P-40 C. is not applied to prevent the exemption.

In summary, for the above reasons, this initial hearing decision does not rely on the analysis found in Appeal 06-1109 when determining the applicability of the exclusive use exemption to the subject property.

V. Conclusion

The subject property meets the exclusive use exemption from April 29, 2013 through December 31, 2013. At the time of purchase, the subject property was “committed to a use” that was exclusively charitable in nature. This commitment to use has been shown by the facts of the Taxpayer’s “intention and its manifestation.” The Taxpayer has shown it was engaged in “bona fide necessary preparation” of the subject property for exclusive charitable use. The “constitutional policy of encouraging private charities” supports the exclusive use exemption in this case. The Taxpayer never held the subject property “for future development,” but instead had the subject property “under development for charitable purposes” and was “engaged in acts appropriate and necessary to bring the property into proper condition” for the Taxpayer’s charitable purposes. For the above reasons, the Taxpayer should be allowed the exclusive use exemption for the subject property from April 29, 2013 through December 31, 2013.

Aimee Nielson-Larios
Administrative Law Judge

DECISION AND ORDER

Based on the foregoing, the Commission finds the subject property qualifies for the exclusive use exemption from April 29, 2013 through December 31, 2013. The RURAL COUNTY Auditor is hereby ordered to adjust its records accordingly. It is so ordered.

This decision does not limit a party's right to a Formal Hearing. However, this Decision and Order will become the Final Decision and Order of the Commission unless any party to this case files a written request within thirty (30) days of the date of this decision to proceed to a Formal Hearing. Such a request shall be mailed to the address listed below and must include the Petitioner's name, address, and appeal number:

Utah State Tax Commission
Appeals Division
210 North 1950 West
Salt Lake City, Utah 84134

Failure to request a Formal Hearing will preclude any further appeal rights in this matter.

DATED this _____ day of _____, 2015.

John L. Valentine
Commission Chair

D'Arcy Dixon Pignanelli
Commissioner

Michael J. Cragun
Commissioner

Robert P. Pero
Commissioner